



Attorney's Docket No. 16800-454

TECH CENTER 1600/2900

Patent

16800-454

AUG 21 2002

#5
Emery
8/22/02

RECEIVED

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)

Olivier de LACHARRIÈRE et al.)

Application No.: 09/902,266)

Filed: July 11, 2001)

For: VITAMIN/METAL SALT)
COMPOSITIONS FOR REDUCING)
HAIR LOSS AND/OR PROMOTING)
HAIR REGROWTH)

Group Art Unit: 1651

Examiner: Michele C. Flood

Confirmation No.: 8334

RECEIVED

AUG 21 2002

Technology Center 2100

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Examiner's requirement for election issued July 24, 2002, Applicants hereby elect, with traverse, the invention of Group I, claims 1-16, directed to a cosmetic/pharmaceutical composition for promoting hair regrowth and/or retarding hair loss, comprising a thus effective amount of intimate admixture of vitamin A, vitamin C, vitamin E, and zinc and selenium values.

Reconsideration of the Requirement for Restriction is respectfully requested in light of the following remarks.

For proper restriction between patentably distinct inventions: (1) the inventions must be independent or distinct as claimed; and (2) there must be a serious burden on the Examiner if restriction is not required. MPEP §803.

The Examiner takes the position that:

In the instant case, the process for using the product as claimed can be practiced with another materially different product.

See Official Action at page 2. Applicants submit that the Requirement for Restriction should be withdrawn based on procedural grounds alone, since the basis for the restriction is inaccurate. More specifically, Applicants submit that the process of Group II cannot be practiced with another materially different product than the product of Group I.

For example, claim 17 explicitly defines administering an effective amount of "intimate admixture of vitamin A, vitamin C, vitamin E and zinc and selenium values." As the compound of Group I comprises the same admixture, Applicants submit that the method of claim 17 clearly cannot be practiced "with another materially different product," as the Examiner has asserted. For at least this reason, Applicants submit that the Examiner has not satisfied the burden of establishing that the inventions are independent or distinct as claimed.

In addition, it is believed that search and examination of the inventions of Groups I and II would be substantially coextensive. In particular, in the present application, Group I is directed to a cosmetic/pharmaceutical composition comprising an effective amount of intimate admixture of vitamin A, C, E and zinc and selenium values. Group II is directed to methods of using a composition comprising an effective amount of an intimate admixture of vitamin A, C, E and zinc and selenium values. Applicants submit that because it is highly likely that the results of search of the claims of Group I would produce references that disclose both specific compositions comprising an admixture of vitamin A, C, E and zinc and selenium values and specific methods of using such compositions, search and

examination of the subject matter of Group I would likely encompass a search for the subject matter of Group II, and any additional search would not impose a serious burden on the Examiner.

It is therefore respectfully asserted that the search and examination of the entire application could be made without serious burden. MPEP §803 states: "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claim too distinct or independent inventions." (emphasis added) Because Applicants have elected Group I, directed to a cosmetic/pharmaceutical composition comprising an effective amount of an intimate admixture of vitamin A, C, E and zinc and selenium, the further search and examination of Group II, directed to a method of using such a composition, would not place a serious burden upon the Examiner.

For at least these reasons, in order to avoid unnecessary delay and expense to applicants and duplicative examination by the Patent Office, it is respectfully requested that the restriction requirement be reconsidered and withdrawn.

If there are any questions concerning this response, or the application in general,
applicants invite the Examiner to telephone the undersigned at the below listed number.

Respectfully submitted,

BURNS, DOANE, SWECKER & MATHIS, L.L.P.

By: _____



Martin A. Bruehs
Registration No. 45,635

P.O. Box 1404
Alexandria, Virginia 22313-1404
(703) 836-6620

Date: August 19, 2002